

III. INDICTMENT AND INFORMATION	TITLE III. THE GRAND JURY, THE INDICTMENT, AND THE INFORMATION
Rule 6. The Grand Jury	Rule 6. The Grand Jury
<p>(a) Summoning Grand Juries.</p> <p>(1) Generally. The court shall order one or more grand juries to be summoned at such time as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.</p> <p>(2) Alternate Jurors. The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impanelled as provided in subdivision (g) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impanelled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.</p>	<p>(a) Summoning a Grand Jury.</p> <p>(1) <i>In General.</i> When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.</p> <p>(2) <i>Alternate Jurors.</i> When a grand jury is selected, the court may designate alternate jurors. They must be drawn and summoned in the same manner and must have the same qualifications as regular jurors. Alternate jurors will be impaneled in the sequence in which they are designated. If impaneled, an alternate juror is subject to the same challenges, takes the same oath, and has the same functions, duties, powers, and privileges as a regular juror.</p>
<p>(b) Objections to Grand Jury and to Grand Jurors.</p> <p>(1) Challenges. The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.</p> <p>(2) Motion to Dismiss. A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.</p>	<p>(b) Objections to the Grand Jury or to a Grand Juror.</p> <p>(1) <i>Challenges.</i> Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.</p> <p>(2) <i>Motion to Dismiss an Indictment.</i> A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by 28 U.S.C. § 1867(e). The court cannot dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.</p>

<p>(c) Foreperson and Deputy Foreperson. The court shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and affirmations and shall sign all indictments. The foreperson or another juror designated by the foreperson shall keep record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreperson, the deputy foreperson shall act as foreperson.</p>	<p>(c) Foreperson and Deputy Foreperson. The court will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson — or another juror designated by the foreperson — will record the number of jurors concurring in every indictment and will file the record with the district clerk, but the record may not be made public unless the court so orders.</p>
<p>(d) Who May Be Present.</p> <p>(1) While Grand Jury is in Session. Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session.</p> <p>(2) During Deliberations and Voting. No person other than the jurors, and any interpreter necessary to assist a juror who is hearing or speech impaired, may be present while the grand jury is deliberating or voting.</p>	<p>(d) Who May Be Present.</p> <p>(1) <i>While the Grand Jury Is in Session.</i> The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or operator of a recording device.</p> <p>(2) <i>During Deliberations and Voting.</i> No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.</p>

(e) Recording and Disclosure of Proceedings.

(1) Recording of Proceedings. All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the government unless otherwise ordered by the court in a particular case.

(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(e) Recording and Disclosing Proceedings.

(1) Recording the Proceedings. Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. The validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) General Rule of Secrecy. Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (A) a grand juror;
- (B) an interpreter;
- (C) a court reporter;
- (D) an operator of a recording device;
- (E) a person who transcribes recorded testimony;
- (F) an attorney for the government; or
- (G) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii).

(3) Exceptions.

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

- (i) an attorney for the government for use in the performance of such attorney's duty; and
- (ii) such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made, and shall certify that the attorney has advised such persons of their obligation of secrecy under this rule.

(3) Exceptions.

(A) Disclosure of a grand-jury matter — other than the grand jury's deliberations or any grand juror's vote — may be made to:

- (i) an attorney for the government for use in performing that attorney's duty; or
- (ii) any government personnel — including those of a state or state subdivision or of an Indian tribe — that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

- (i) when so directed by a court preliminarily to or in connection with a judicial proceeding;
- (ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;
- (iii) when the disclosure is made by an attorney for the government to another federal grand jury; or
- (iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(C) An attorney for the government may disclose any grand-jury matter to another federal grand jury.

(D) The court may authorize disclosure — at a time, in a manner, and subject to any other conditions that it directs — of a grand-jury matter:

- (i) preliminarily to or in connection with a judicial proceeding;
- (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;
- (iii) at the request of the government if it shows that the matter may disclose a violation of state or Indian tribal criminal law, as long as the disclosure is to an appropriate state, state-subdivision, or Indian tribal official for the purpose of enforcing that law; or
- (iv) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

<p>(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.</p>	<p>(E) A petition to disclose a grand-jury matter under Rule 6(e)(3)(D)(i) must be filed in the district where the grand jury convened. Unless the hearing is ex parte — as it may be when the government is the petitioner — the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:</p> <ul style="list-style-type: none"> (i) the attorney for the government; (ii) the parties to the judicial proceeding; and (iii) any other person whom the court may designate.
<p>(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.</p>	<p>(F) If the petition to disclose arises out of a proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper. If the petitioned court decides to transfer, it must send to the transferee court the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand-jury secrecy. The transferee court must afford those persons identified in Rule 6(e)(3)(E) a reasonable opportunity to appear and be heard.</p>

(4) **Sealed Indictments.** The federal magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(5) **Closed Hearing.** Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) **Sealed Records.** Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

(4) **Sealed Indictment.** The magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) **Closed Hearing.** Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) **Sealed Records.** Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

(7) **Contempt.** A knowing violation of Rule 6 may be punished as a contempt of court.

(f) Finding and Return of Indictment. A grand jury may indict only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury, or through the foreperson or deputy foreperson on its behalf, to a federal magistrate judge in open court. If a complaint or information is pending against the defendant and 12 persons do not vote to indict, the foreperson shall so report to a federal magistrate judge in writing as soon as possible.

(g) Discharge and Excuse. A grand jury shall serve until discharged by the court, but no grand jury may serve more than 18 months unless the court extends the service of the grand jury for a period of six months or less upon a determination that such extension is in the public interest. At any time for cause shown the court may excuse a juror, either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(f) Indictment and Return. A grand jury may indict only if at least 12 jurors concur. The grand jury — or its foreperson or deputy foreperson — must return the indictment to a magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

(g) Discharge. A grand jury must serve until the court discharges it, but it may serve more than 18 months only if the court, having determined that an extension is in the public interest, extends the grand jury's service. An extension may be granted for no more than 6 months, except as otherwise provided by statute.

(h) Excuse. At any time, for good cause, the court may excuse a juror either temporarily or permanently, and if permanently, the court may impanel an alternate juror in place of the excused juror.

(i) Indian Tribe. "Indian tribe" means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 479a-1.

COMMITTEE NOTE

The language of Rule 6 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic, except as noted below.

The first change is in Rule 6(b)(1). The last sentence of current Rule 6(b)(1) provides that "Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court." That language has been deleted from the amended rule. The remainder of this subdivision rests on the assumption that formal proceedings have begun against a person, i.e., an indictment has been returned. The Committee believed that although the first sentence reflects current practice of a defendant being able to challenge the composition or qualifications of the grand jurors after the indictment is returned, the second sentence does not comport with modern practice. That is, a defendant will normally not know the composition of the grand jury or identity of the grand jurors before they are administered their oath. Thus, there is no opportunity to challenge them and have the court decide the issue before the oath is given.

In Rule 6(d)(1), the term "court stenographer" has been changed to "court reporter." Similar changes have been made in Rule 6(e)(1) and (2).

Rule 6(e) continues to spell out the general rule of secrecy of grand-jury proceedings and the exceptions to that

general rule. The last sentence in current Rule 6(e)(2), concerning contempt for violating Rule 6, now appears in Rule 6(e)(7). No change in substance is intended.

Rule 6(e)(3)(A)(ii) includes a new provision recognizing the sovereignty of Indian Tribes and the possibility that it would be necessary to disclose grand-jury information to appropriate tribal officials in order to enforce federal law. Similar language has been added to Rule 6(e)(3)(D)(iii).

Rule 6(e)(3)(C) consists of language located in current Rule 6(e)(3)(C)(iii). The Committee believed that this provision, which recognizes that prior court approval is not required for disclosure of a grand-jury matter to another grand jury, should be treated as a separate subdivision in revised Rule 6(e)(3). No change in practice is intended.

Rule 6(e)(3)(D)(iv) is a new provision that addresses disclosure of grand-jury information to armed forces personnel where the disclosure is for the purpose of enforcing military criminal law under the Uniform Code of Military Justice, 10 U.S.C. §§ 801-946. *See, e.g.,* Department of Defense Directive 5525.7 (January 22, 1985); 1984 Memorandum of Understanding Between Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes; Memorandum of Understanding Between the Departments of Justice and Transportation (Coast Guard) Relating to the Investigations and Prosecution of Crimes Over Which the Two Departments Have Concurrent Jurisdiction (October 9, 1967).

In Rule 6(e)(3)(E)(ii), the Committee considered whether to amend the language relating to "parties to the judicial proceeding" and determined that in the context of the rule, it is understood that the parties referred to are the parties in the same judicial proceeding identified in Rule 6(e)(3)(D)(i).

The Committee decided to leave in subdivision (e) the provision stating that a "knowing violation of Rule 6" may be punished by contempt notwithstanding that, due to its apparent application to the entirety of the Rule, the provision seemingly is misplaced in subdivision (e). Research shows that Congress added the provision in 1977 and that it was crafted solely to deal with violations of the secrecy prohibitions in subdivision (e). *See* S. Rep. No. 95-354, p. 8 (1977). Supporting this narrow construction, the Committee found no reported decision involving an application or attempted use of the contempt sanction to a violation other than of the disclosure restrictions in subdivision (e). On the other hand, the Supreme Court in dicta did indicate on one occasion its arguable understanding that the contempt sanction would be available also for a violation of Rule 6(d) relating to who may be present during the grand jury's deliberations. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 263 (1988).

In sum, it appears that the scope of the contempt sanction in Rule 6 is unsettled. Because the provision creates an offense, altering its scope may be beyond the authority bestowed by the Rules Enabling Act, 28 U.S.C. §§ 2071 et seq. *See* 28 U.S.C. § 2072(b) (Rules must not "abridge, enlarge, or modify any substantive right"). The Committee decided to leave the contempt provision in its present location in subdivision (e), because breaking it out into a separate subdivision could be construed to support the interpretation that the sanction may be applied to a knowing violation of any of the Rule's provisions rather than just those in subdivision (e). Whether or not that is a correct interpretation of the provision — a matter on which the Committee takes no position — must be determined by case law, or resolved by Congress.

Current Rule 6(g) has been divided into two new subdivisions, Rule 6(g), Discharge, and Rule 6(h), Excuse. The Committee added the phrase in Rule 6(g) "except as otherwise provided by statute," to recognize the provisions of 18 U.S.C. § 3331 relating to special grand juries.

Rule 6(i) is a new provision defining the term "Indian Tribe," a term used only in this rule.

Rule 7. The Indictment and the Information	Rule 7. The Indictment and the Information
<p>(a) Use of Indictment or Information. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court.</p>	<p>(a) When Used.</p> <p>(1) <i>Felony.</i> An offense must be prosecuted by an indictment if it is punishable:</p> <p style="padding-left: 40px;">(A) by death; or</p> <p style="padding-left: 40px;">(B) by imprisonment for more than one year.</p> <p>(2) <i>Misdemeanor.</i> An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).</p>
<p>(b) Waiver of Indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after having been advised of the nature of the charge and of the rights of the defendant, waives in open court prosecution by indictment.</p>	<p>(b) Waiving Indictment. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant — in open court and after being advised of the nature of the charge and of the defendant's rights — waives prosecution by indictment.</p>

(c) Nature and Contents.

(1) **In General.** The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) **Criminal Forfeiture.** No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.¹

(3) **Harmless Error.** Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(d) **Surplusage.** The court on motion of the defendant may strike surplusage from the indictment or information.

(e) **Amendment of Information.** The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(c) Nature and Contents.

(1) **In General.** The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) **Criminal Forfeiture.** No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture in accordance with the applicable statute.

(3) **Citation Error.** Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) **Surplusage.** Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) **Amending an Information.** Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before verdict or finding.

¹The Supreme Court approved amendment in April 2000. The amendments take effect on December 1, 2000, unless Congress takes action otherwise.

(f) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(f) Bill of Particulars. The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 10 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

COMMITTEE NOTE

The language of Rule 7 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic.

The Committee has deleted the references to "hard labor" in the rule. This punishment is not found in current federal statutes.

[Rule 7(c)(2), Criminal Forfeiture, is language approved by the Supreme Court in May 2000, and pending review by Congress under 28 U.S.C. § 2074(a).]

The title of Rule 7(c)(3) has been amended. The Committee believed that potential confusion could arise with the use of the term "harmless error." Rule 52, which deals with the issues of harmless error and plain error, is sufficient to address the topic. Potentially, the topic of harmless error could arise with regard to any of the other rules and there is insufficient need to highlight the term in Rule 7. Rule 7(c)(3), on the other hand, focuses specifically on the effect of an error in the citation of authority in the indictment. That material remains but without any reference to harmless error.

Rule 8. Joinder of Offenses and of Defendants	Rule 8. Joinder of Offenses or Defendants
<p>(a) Joinder of Offenses. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.</p>	<p>(a) Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged — whether felonies or misdemeanors or both — are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.</p>
<p>(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.</p>	<p>(b) Joinder of Defendants. The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.</p>

COMMITTEE NOTE

The language of Rule 8 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 9. Warrant or Summons Upon Indictment or Information	Rule 9. Arrest Warrant or Summons on an Indictment or Information
<p>(a) Issuance. Upon the request of the attorney for government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue. When a defendant arrested with a warrant or given a summons appears initially before a magistrate judge, the magistrate judge shall proceed in accordance with the applicable subdivisions of Rule 5.</p>	<p>(a) Issuance. The court must issue a warrant — or at the government's request, a summons — for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. More than one warrant or summons may issue for the same defendant. If a defendant fails to appear in response to a summons, the court may, and upon request of the attorney for the government must, issue a warrant. The court must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it.</p>
<p>(b) Form.</p> <p>(1) Warrant. The form of the warrant shall be as provided in Rule 4(c)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the nearest available magistrate judge. The amount of bail may be fixed by the court and endorsed on the warrant.</p> <p>(2) Summons. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate judge at a stated time and place.</p>	<p>(b) Form.</p> <p>(1) Warrant. The warrant must conform to Rule 4(b)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information.</p> <p>(2) Summons. The summons is to be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.</p>

<p>(c) Execution or Service; and Return.</p> <p>(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(d)(1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person without unnecessary delay before the nearest available federal magistrate judge or, in the event that a federal magistrate judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041.</p>	<p>(c) Execution or Service; Return; Initial Appearance.</p> <p>(1) Execution or Service.</p> <p>(A) The warrant must be executed or the summons served as provided in Rule 4(c)(1), (2), and (3).</p> <p>(B) The officer executing the warrant must proceed in accordance with Rule 5(a)(1).</p>
<p>(2) Return. The officer executing a warrant shall make return thereof to the magistrate judge or other officer before whom the defendant is brought. At the request of the attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.</p>	<p>(2) Return. A warrant or summons must be returned in accordance with Rule 4(c)(4).</p> <p>(3) Initial Appearance. When an arrested or summoned defendant first appears before the court, the judge must proceed under Rule 5.</p>
<p>[(d) Remand to United States Magistrate for Trial of Minor Offenses] (Abrogated Apr. 28, 1982, eff. Aug. 1, 1982).</p>	

COMMITTEE NOTE

The language of Rule 9 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Rule 9 has been changed to reflect its relationship to Rule 4 procedures for obtaining an arrest warrant or summons. Thus, rather than simply repeating material that is already located in Rule 4, the Committee determined that where appropriate, Rule 9 should simply direct the reader to the procedures specified in Rule 4.

Rule 9(a) has been amended to permit a judge discretion whether to issue an arrest warrant when a defendant fails to respond to a summons on a complaint. Under the current language of the rule, if the defendant fails to appear, the judge must issue a warrant. Under the amended version, if the defendant fails to appear and the government requests that

a warrant be issued, the judge must issue one. In the absence of such a request, the judge has the discretion whether to do so. This change mirrors language in amended Rule 4(a).

A second amendment has been made in Rule 9(b)(1). The rule has been amended to delete language permitting the court to set the amount of bail on the warrant. The Committee believes that this language is inconsistent with the 1984 Bail Reform Act. *See United States v. Thomas*, 992 F. Supp. 782 (D.V.I. 1998) (bail amount endorsed on warrant that has not been determined in proceedings conducted under Bail Reform Act has no bearing on decision by judge conducting Rule 40 hearing).

The language in current Rule 9(c)(1), concerning service of a summons on an organization, has been moved to Rule 4.